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IN THE

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OCTOBER TERM, 1999

CRYSTAL M. FERGUSON, et al.,
Petitioners,
v.
THE CITY OF CHARLESTON, SOUTH CAROLINA, et al.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF AND BRIEF OF THE NARAL FOUNDATION® ET AL. AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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MOTION OF THE NARAL FOUNDATION ET AL. FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONERS

The NARAL Foundation et al. hereby move, pursuant to Rule 37 of this Court, for leave to file an *amicus curiae* brief in support of Petitioners. The motion is necessitated by Respondents' refusal to consent to the filing of the brief. A copy of Petitioners' letter providing such consent is submitted herewith.

The resolution of this case is of great significance to the NARAL Foundation et al. The NARAL Foundation and

several co-*amici* are organizations dedicated to promoting women's reproductive health and freedom, ensuring that women are not punished based on their reproductive capacities, and helping decision-makers understand the impact of policies and laws on women's health and lives. Other groups join us, due to their commitment to sound drug policy, promotion of minority health, knowledge of behavioral health, and advocacy for the health and rights of prisoners and the homeless. The Court's decision in this case will have a profound effect on women's lives, freedoms, and reproductive rights. Punitive policies that impose involuntary drug searches on pregnant women and threaten incarceration upon a positive drug test infringe upon women's reproductive rights and impose burdens on women due to their reproductive capacity that are not imposed on men. Moreover, because such punitive policies can actually deter women from seeking necessary medical care, they fail to promote healthy childbearing. Additionally, such policies as historically and currently implemented bear most heavily on women of color.

The NARAL Foundation et al. seek to help inform the Court about the dangers to women's health inherent in such punitive policies and the unmet need for adequate, voluntary drug treatment programs designed to meet the needs of pregnant women and their families. The NARAL Foundation et al. believe our *amicus curiae* brief will serve this purpose by providing the Court with relevant legal and factual information not already brought to the Court's attention by the parties, particularly with respect to the societal circumstances that may lead women to drug addiction, the barriers such women face in attempting to overcome their addiction, and the deficiencies of the measures applied by Respondents in this case as a means to address the particular needs of pregnant women battling drug addiction.

To bring such additional information before the Court, the NARAL Foundation et al. respectfully request leave to file the *amicus curiae* brief submitted herewith.

Respectfully submitted,

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INTERESTS OF *AMICI CURIAE*

The NARAL Foundation and several co-*amici* are organizations committed to promoting women's reproductive health and freedom, ensuring that women are not punished based on their reproductive capacities, and helping decision-makers understand the impact of policies and laws on women's health and lives. Other groups join us, due to their commitment to sound drug policy, promotion of minority health, knowledge of behavioral health, and advocacy for the health and rights of prisoners and the homeless. All of the *amici* have a strong interest in the Court's decision in this case, which will have a profound effect on women's lives, freedoms, and reproductive rights. Descriptions of each of the *amici* are provided in the Appendix hereto.[1]

SUMMARY OF ARGUMENT

Respondents undertook the involuntary drug searches at issue in this case for a purpose and in a manner that cannot be justified under the narrow "special needs" exception to the warrant and individualized suspicion requirements of the Fourth Amendment to the United States Constitution.

This Court has sustained warrantless, suspicionless searches only in cases where "special governmental needs, beyond the normal need for law enforcement" existed that made it impractical to require a warrant or some level of individualized suspicion, *National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 665 (1989), and the searches were premised on "concerns other than crime

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[1] This brief was not authored, in whole or in part, by any counsel for a party. No person or entity, other than the *amici curiae*, their members, or counsel contributed monetarily to the preparation or submission of this brief.

detection," *Chandler v. Miller*, 520 U.S. 305, 314 (1997) (citation omitted). The Court has found such searches permissible, however, only if they are both effective at advancing the asserted non-law enforcement interest and minimally intrusive on an individual's privacy. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 658-63 (1995). The hospital's searches neither had a true non-law enforcement purpose nor were they effective to accomplish Respondents' purported goals, and they were highly intrusive.

Respondents designed their drug search policy with a dominant law enforcement purpose. From the moment Medical University of South Carolina ("MUSC") Nurse Shirley Brown mentioned the possibility of prosecuting pregnant drug users to the MUSC General Counsel, Respondents pursued punishment for such women, collaborating with law enforcement personnel to develop and implement the policy and turning over search results to law enforcement personnel in order to facilitate the arrest of women who tested positive for cocaine. Although the searches were conducted in the hospital, rather than at a police station, they were very much intended for law enforcement purposes. Women subjected to the search policy were arrested on the spot, some being led out of the hospital in handcuffs just after giving birth, still dressed in their hospital gowns. The fact that the person conducting the search wore a white hospital coat instead of a police uniform cannot, under proper scrutiny, obscure the policy's dominant law enforcement aim.

Even if Respondents had undertaken the searches for the asserted purpose of protecting the health of pregnant women and their fetuses, they failed egregiously to achieve that end because the searches did not result in appropriate drug treatment. Respondents did not provide the women they searched with treatment or services that came even close to meeting the women's needs or those of their future children.

Respondents purportedly offered pregnant women a "choice" between arrest and treatment. In fact, this purported "choice" was merely illusory: the only treatment available did not provide childcare, was difficult for some women to access, did not appear to account for the societal factors that led to and compromised the women's ability to recover from their addiction, and was not designed to treat pregnant women. Respondents offered, therefore, no realistic treatment option.

Furthermore, involuntary drug search programs such as Respondents' can perversely discourage women from seeking treatment. The fear of punishment engendered by such policies deters some women from going to the hospital to receive prenatal medical care. By discouraging women from seeking treatment, involuntary search policies actually threaten the health of pregnant women and their fetuses because some pregnant women undoubtedly go through their pregnancies without appropriate medical attention.

In addition to being ineffective to achieve Respondents' asserted goal, the involuntary searches constituted a major intrusion into the privacy interests of the women in question. They were not the "normal, routine, and expected part of a medical examination," as the court below erroneously found. *Ferguson v. City of Charleston,* 186 F.3d 469, 479 (4th Cir. 1999). The fact that they took place in a hospital made them no less intrusive than if they had been conducted in the jailhouse, because their principal purpose and effect was to incriminate those searched. Moreover, the criteria that were used to select whom to test accorded the MUSC staff wide discretion, making the searches highly intrusive on a subjective basis and inviting abuse. *Cf. Von Raab*, 489 U.S. at 667 (concluding warrant not required to protect against major intrusion where discretion is absent). This is particularly evident from the disparate impact of the selection criteria on African American women: rather than selecting women for testing based solely on neutral,

objective standards, Respondents focused on factors closely tied to race and poverty.

For all these reasons, Respondents' search policy cannot be justified under the "special needs" exception. The search policy is representative of policies that punish, rather than effectively aid, pregnant drug users. Such punitive approaches fail to recognize that drug addiction is a disease requiring medical treatment. While it is tragic if an infant is born suffering negative effects from prenatal drug exposure, adopting a punitive approach to this dilemma only compounds the tragedy. Providing voluntary treatment opportunities for drug-addicted pregnant women, not incarcerating or demonizing them, is the proper method for addressing this social concern. The search policy at issue in this case and others like it are counterproductive and harmful to women and children, serving as pretexts for punitive, evidence-gathering missions, where law enforcement masquerades as medicine.

Because drug-addicted pregnant women may face multiple obstacles to overcoming their addiction, they need comprehensive drug treatment and related social services addressing the totality of circumstances surrounding their drug use. Research demonstrates that women with drug problems experience violence, such as rape, incest, and domestic violence, at a substantial rate. Effective treatment addresses these concerns, while incorporating a therapeutic, rather than an adversarial, approach to recovery. Additionally, appropriate programs provide childcare in recognition of the fact that women taking care of other children may be forced to forgo treatment without such service. Transportation services also are essential for those women, especially poor women, lacking access to treatment.

To properly judge the legitimacy of the searches Respondents conducted requires probing beyond the seemingly benign interests asserted. This Court's experience

with policies aimed at protecting women, children, and fetuses that in fact violate fundamental rights should be instructive. *See, e.g., International Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Johnson Controls, Inc.*, 499 U.S. 187 (1991) (recognizing that an employment policy premised on protecting women and their children from actual or potential lead exposure discriminated against women on the basis of gender); *see also* Mary E. Becker, *From* Muller v. Oregon *to Fetal Vulnerability Policies*, 53 U. Chi. L. Rev. 1219 (1987) (criticizing fetal vulnerability and protectionist policies as actually threatening the health of women and children). Had Respondents in fact sought to promote healthy childbearing, they would have offered voluntary and appropriate treatment for women of childbearing years struggling with addiction, poverty, abuse, and the lack of childcare. Respondents failed to do so, instead devising a policy that resulted in the arrest of pregnant and postpartum women, who in effect were targeted for prosecution based on their reproductive capacity. Respondents' involuntary drug search policy cannot, therefore, be justified under the special needs exception.

ARGUMENT

I. RESPONDENTS CONDUCTED THEIR DRUG SEARCHES PRIMARILY FOR AN INCRIMINATORY PURPOSE.

Respondents claimed that the search policy aimed to improve the health of pregnant women and their future children. However, the record amply belies this claim, demonstrating that Respondents' primary goal was to seek out and punish lawbreakers. That goal cannot support application of the "special needs" exception to the Fourth Amendment. *Cf. Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 620-21 & n.5 (1989) (finding governmental interest acceptable in part because searches were conducted "not to assist in the prosecution of

employees" and observing that showing of pretextual searches might render search program invalid).[2]

Police and prosecutors, particularly the Office of the Solicitor of the Ninth Judicial Circuit of South Carolina, were integrally involved in formulating the search policy. In the fall of 1989, MUSC Nurse Shirley Brown heard of Greenville's program of arresting drug-using pregnant women. She spurred MUSC's General Counsel to write to Solicitor Condon regarding the Greenville Solicitor who was "prosecuting mothers who gave birth to children who tested positive for drugs" and to ask Solicitor Condon to "advise us if your office is anticipating future criminal action and what if anything our Medical Center needs to do to assist you in this matter." (App. to Pet. for Cert. 67.) Next, Solicitor Condon wrote to Police Chief Reuben Greenberg about "forming a task force to consider possible prosecution of the mothers," and asked the Police Chief to co-chair the task force on this matter. *Id.* at 69.

MUSC, the Charleston City Police Department, and the Solicitor's Office then met to formulate the search policy, focusing on arrest of drug-using pregnant women. *See id.* at 64. Arrest likewise became the theme of the MUSC Medical Center Policy Manual M-7, which explained that "[p]regnant women abusing illegal drugs" is a problem that necessitates "medical/police intervention." *Id.* at 53. The manual urged hospital staff to follow chain-of-custody procedures with respect to urine samples and prescribed procedures for providing search results to the Police

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[2] Petitioners' brief examines the "special needs" exception, and *amici* will not undertake a comprehensive examination here. As the relevant case law makes clear, the "special needs" doctrine is fundamentally inconsistent with an underlying purpose of incrimination and prosecution. *Amici* incorporate by reference here the documentation to that effect provided by Petitioners.

Department. *See id.* at 53-56. The Police Department, in turn, established operational guidelines regarding arrest of hospital patients when a search revealed evidence of cocaine use. *See id.* at 49-52. The police were instructed that "[a]s in the case of all arrests, the suspect shall be questioned concerning the charges against her and a written record made of same." *Id.* at 51.

The search policy was not only grounded on investigative purposes and effectively crafted by law enforcement authorities, but also administered in conjunction with police. For example, the Charleston City Police Department designated a "lead investigator" and instructed MUSC staff "to contact the police dispatcher and request a Crimes v. Persons detective" for after-business hours cases. *Id.* at 52 (revealing the implicit assumption that a pregnant woman's drug use is a crime against the fetus as a person). Similarly, the hospital employed proper chain-of-custody procedures, underscoring the expectation that search results would be used in criminal prosecutions. *See id.* at 54. Medical staff so identified with law enforcement that nursing notes included such comments as, "At this point *we* do not have legal ground to arrest." (J.A. 618 (Hilderbrand Test.)) (emphasis added).

These facts, and in particular the systematic release of drug search results to law enforcement by Respondents, distinguish this case from every one of the cases in which this Court found drug testing to be justified under the special needs doctrine. *See, e.g.*, *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 658 (1995); *National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 666 (1989); *Skinner*, 489 U.S. at 621 n.5. Based on its law enforcement purpose alone, the search policy cannot be justified under that exception.

II. THE SEARCH POLICY WAS NEITHER EFFECTIVE TO ACHIEVE RESPONDENTS' ASSERTED GOAL NOR MINIMALLY INTRUSIVE.

Even if, as Respondents assert, the search policy was not aimed primarily at law enforcement, the searches they undertook in this case were unreasonable because they were not effective in serving Respondents' purported drug treatment objective. *See Vernonia*, 515 U.S. at 660-61 (evaluating whether a search policy was effective in meeting the stated governmental concern). Further, even if the policy could have helped some women, the searches were unreasonable because, by their very nature, they were more than minimally intrusive upon the searched women's right to privacy.[3]

The search policy was ineffective because Respondents did not offer those women who tested positive treatment options that were either realistic or appropriate, and because the involuntary drug searches most likely deterred some pregnant women from seeking prenatal care – a result directly contrary to Respondents' purported interest. *Cf. International Union, United Automobile, Aerospace & Agricultural Implement Workers of America v. Johnson Controls, Inc.*, 886 F.2d 871, 916-18 (7th Cir. 1989) (Easterbrook, J., dissenting) (observing that "Title VII does not allow an employer to adopt a policy that simultaneously makes both women and their children worse off"), *rev'd*, 499 U.S. 187 (1991); *see also* Mary E. Becker, *From* Muller v. Oregon *to Fetal Vulnerability Policies*, 53 U. Chi. L. Rev. 1219 (1987) (criticizing fetal vulnerability and protectionist policies as actually threatening the health of women and

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[3] *Amici* cannot, in fact, conceive of an involuntary drug search program for women that would only "minimally" intrude on fundamental privacy rights.

children). Both in failing to serve its purported governmental purpose of treatment and in failing to reach the women needing treatment, the search policy was ineffective and therefore disqualified for justification under the special needs exception.

A. Respondents' Involuntary Drug Searches Failed To Improve the Health of Pregnant Women and Their Fetuses.

Under the special needs exception, effectiveness is measured by the degree to which a search advances the asserted governmental interest. *Cf. Chandler,* 520 U.S. at 319 (concluding Georgia drug testing regime was not well designed to advance interest in identifying candidates who violated drug laws). Respondents' involuntary drug searches did not result in appropriate treatment or otherwise end pregnant women's drug use. Contrary to the findings of the Fourth Circuit below, the mere identification of some pregnant women using cocaine was not sufficient to render the search policy effective to achieve its purported goal.

1. Involuntary Drug Searches Alone Do Not Stop Drug Use.

A drug search is not a form of drug treatment. Rather, a drug search is simply one tool – neither the only nor even the best tool – for identifying substance use. Respondents could not have achieved their asserted objective unless they offered the women subject to the search policy some reasonable means of addressing their addiction, namely appropriate treatment.[4] However, Respondents did not

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[4] Respondents should have been aware of the need for an effective therapeutic program. (J.A. 710-11 (Jessup Test.)) Solicitor Condon contacted Dr. Ira Chasnoff, the only national expert Respondents consulted when they developed the policy, for

(footnote continued on next page)

provide appropriate drug treatment. For example, Patricia Williams testified that she was never offered referral to a substance abuse program other than the Charleston County Substance Abuse Treatment Program ("CCSA"), which provided only generic outpatient services. (J.A. 1208-09 (P. Williams Test.)) Lori Griffin stated that she was never given or referred to counseling or treatment. (J.A. 546, 548, 562 (Griffin Test.))

Drug addiction is a disease and to be treated effectively must be understood as such. *See* American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders* 222-23 (4th ed. 1994) (cocaine dependence classified as a disease); 1 ICD-9-CM International Classification of Diseases 49-50 (5th ed. 9th Rev. 1997) (cocaine dependence classified as a disease); *see also* Pier Vincenzo Piazza et al., *Behavioral and Biological Factors Associated with Individual Vulnerability to Psychostimulant Abuse*, in Medications Development for the Treatment of Pregnant Addicts and Their Infants 105, 105 (1995) (suggesting possible genetic predisposition to drug addiction). Respondents claimed the search policy would scare pregnant women off drugs; however, drug users cannot overcome their addiction simply because someone tells them to stop. (J.A. 294-95 (Chasnoff Test.)); (J.A. 656-57

(footnote continued from previous page)

an opinion on the search policy. (J.A. 279-80 (Chasnoff Test.)) Chasnoff opposed the policy and informed Solicitor Condon that such a punitive policy would steer women away from treatment and prenatal care, that focusing exclusively on cocaine was unwarranted, and that the policy would not improve fetal health. (J.A. 281-82, 293-94 (Chasnoff Test.)) Moreover, Sarah Schuh, a pediatrician at MUSC, testified that around 1989, she developed a grant proposal that would have provided much-needed services, counseling, and transportation. The grant proposal never went forward. (J.A. 1107-13 (Schuh Test.))

(Horger Test.)) Indeed, criminal action ignores the underlying disease and demonizes such women when, in fact, research demonstrates the attempts of some such women to protect fetal health: they "separated drug use and parental roles, budgeted money, tried to get away from the crack scene . . . [and] tried to lower their intake, switched from 'harder' to 'softer' drugs . . . and ingested health-promoting substances such as vitamins." Marsha Rosenbaum, *Women: Research and Policy*, in Substance Abuse, A Comprehensive Textbook 654, 656-57 (Joyce H. Lowinson et al. eds., 3d ed. 1997) (footnote omitted) [hereinafter "Research and Policy"]. Pregnancy may actually be an incentive for women to enter drug treatment. *See* Marsha Rosenbaum, *Women and Treatment*, Drug Policy Letter 10, 12 (Winter 1998) [hereinafter "Women and Treatment"]. The search policy countered this incentive by threatening arrest rather than offering appropriate treatment to pregnant women.

2. Respondents Offered Only an Illusory Treatment "Choice."

Initially, the search policy required that a woman who tested positive for cocaine upon delivery be arrested, based on that single search. *See Ferguson*, 186 F.3d at 474. During the initial phase of the policy, three of the Petitioners were arrested after giving birth. *See id.* at 485 (Blake, J., dissenting in part).[5] Additionally, women testing positive prior to delivery were supposed to be offered treatment in

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[5] Sandra Powell delivered her child at MUSC, tested positive for cocaine, and was arrested at the hospital the next day. Laverne Singleton delivered her child in the ambulance en route to MUSC, tested positive for cocaine upon admission and was arrested at the hospital the following morning. Although Ellen Knight tested negative, her child tested positive at birth and Ms. Knight was arrested at the hospital. *See id.* (Blake, J., dissenting in part).

lieu of arrest. (J.A. 342-43 (Condon Test.)) (describing policy as purportedly "amnesty"-based when first implemented). Respondents concede, however, that this did not happen when the search policy was first implemented. *See* Respondents' Br. in Opp'n to Pet. for Cert. at 7 n.4.[6]

In early 1990, the policy was revised to require the offer of treatment to all women whose first search indicated the presence of cocaine. *See Ferguson*, 186 F.3d at 474. Under the revised policy, a woman who tested positive for cocaine could avoid arrest and prosecution if (and only if) she entered into a generic drug treatment program. *See id.* However, if a second search yielded evidence of cocaine, she would be arrested. *See id.* The purported choice between treatment and arrest under the search policy was illusory, however, because the treatment offered was neither realistically accessible to nor adequate for the women in need.

a. Charleston had no treatment facilities geared to treat indigent pregnant women.

Charleston – and indeed South Carolina in general – had no drug treatment centers designed to treat indigent pregnant women when the search policy was implemented. (J.A. 135 (Brown Test.)); (J.A. 601 (Haynes Test.))[7] The

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[6] For example, Lori Griffin tested positive upon entering the hospital with contractions, and was jailed, returning to the hospital several weeks later to deliver. *See Ferguson*, 186 F.3d at 485 (Blake, J., dissenting in part). While in state custody, Griffin endured premature labor pains, received medical care, and delivered her baby all while shackled and handcuffed. (J.A. 559-563 (Griffin Test.))

[7] *See also* U.S. General Accounting Office, GAO/HRD-91-80, *ADMS Block Grant: Women's Set-Aside Does Not Assure Drug*

(footnote continued on next page)

hospital's own psychiatric department did not provide substance abuse treatment to indigent pregnant women until 1991. (J.A. 135-36 (Brown Test.)) CCSA had no programs specifically geared toward women, pregnant women, or cocaine users. (J.A. 57 (Beckett Test.)); (J.A. 601 (Haynes Test.)) In addition, CCSA was temporarily closed in 1989 due to Hurricane Hugo (J.A. 54-55 (Beckett Test.)) Consequently, plaintiff Ellen Knight, who tested positive for cocaine in November of 1989, had to wait until January of 1990 for treatment – by which time she had already been arrested and criminal prosecution had been initiated. (J.A. 777-78, 784-86 (Knight Test.))

b. The treatment available was inadequate.

To have been effective to accomplish Respondents' purported goal, the drug treatment offered would have to have been designed to address the particular needs of pregnant women, including childcare and transportation. Generally, women without a spouse, partner, or support system to care for their children while they seek treatment, or the funds for an alternate caregiver, are forced either to forego treatment or to risk leaving children unattended. This deters women with drug problems from seeking treatment or prenatal care because they fear losing their children. *See* Embry M. Howell et al., *A Review of Recent Findings on Substance Abuse Treatment for Pregnant Women*, 16 J. Subst. Abuse Treat. 195, 209 (1999); *see also* ADMS Block Grant, *supra*, at 20. Provision of childcare and transportation for addicted mothers are not perks but

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Treatment for Pregnant Women, App. I at 12 (1991) [hereinafter "ADMS Block Grant"] (in 1990, South Carolina had no "specific treatment services for pregnant women and mothers with young children").

essential elements for effective treatment. (J.A. 720-21 (Jessup Test.)); (J.A. 296-97 (Chasnoff Test.)); (J.A. 604 (Haynes Test.))[8]

CCSA did not offer childcare. (J.A. 604 (Haynes Test.)) Indeed, "[c]hild care services and women-only substance abuse treatment programs . . . were not available in Charleston until November 1994." Philip H. Jos et al., *The Charleston Policy on Cocaine Use During Pregnancy: A Cautionary Tale*, 23 J.L. Med. & Ethics 120, 128 n.47 (1995). Nor was adequate transportation available, as Petitioners made evident. Patricia Williams wanted treatment but had no transportation to get there, a fact to which Nurse Shirley Brown was unsympathetic. (J.A. 1204-06 (P. Williams Test.)) Ms. Nicholson needed to be home to take care of her 7-year-old son when he returned from school, but instead was forced to attend immediate

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[8] Women taking care of other children of any age are often inhibited from entering treatment because they lack childcare alternatives. *See* South Carolina Department of Alcohol and Other Drug Abuse Services, *Specialized Services for Women and Children* (visited Apr. 26, 2000) <http://www.daodas.state.sc.us/services/womenchildren.html>; ADMS Block Grant, *supra*, at 17. Studies have found that "women who have their children with them during residential treatment are less likely to drop out and are more successful after treatment than women whose children are not with them during treatment." Drug Strategies, Keeping Score: Women and Drugs: Looking at the Federal Drug Control Budget *17* (1998); *see also* National Institute on Drug Abuse, *Sixth Triennial Report to Congress from the Secretary of Health and Human Services, Drug Abuse and Addiction Research* (visited Apr. 19, 2000) <http://www.nida.nih.gov/STRC/Role6.html> [hereinafter "Sixth Triennial Report"]. In addition, "[t]reatment programs are often located in areas that are relatively inaccessible by public transportation; this can be a formidable barrier for pregnant women and mothers with young children." ADMS Block Grant, *supra*, at 18.

inpatient drug treatment. (J.A. 900-02 (Nicholson Test.)) Similarly, Ms. Ferguson requested outpatient treatment to care for her children, but was arrested for not going to the inpatient psychiatric unit on the very day she was supposed to start outpatient treatment at CCSA. (J.A. 457-58, 460-62, 478-79 (Ferguson Test.)) Because the majority of women seeking prenatal care at the hospital were poor, *see Ferguson*, 186 F.3d at 489 (Blake, J., dissenting), and many of them had children, they had difficulties availing themselves of the "treatment" offered.

Even beyond their lack of childcare and failure to provide transportation, the limited drug treatment programs that were available do not appear to have been designed to deal with the circumstances facing pregnant drug users. As experts have recognized:

> Women with alcohol and drug problems report high rates of violence, including rape, incest, and domestic violence. Suppression of past violent experiences is identified throughout the literature as a major relapse trigger and is a critical issue that must be addressed as women move into recovery.

Legal Action Center, Steps to Success: Helping Women with Alcohol and Drug Problems Move from Welfare to Work 14 (1999); *see also* 2 Center for Substance Abuse Treatment, U.S. Dep't of Health and Human Services, Pub. No. (SMA) 95-3056, Pregnant, Substance-Using Women 6-7 (1993) [hereinafter "HHS TIP"] (listing characteristics of pregnant women seeking drug treatment through publicly funded programs).[9] Furthermore, whether as a result of

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[9] *See generally* Maia Szalavitz, *War on Drugs, War on Women*, 8 On The Issues Magazine 42 (1999), *reprinted in* Lindesmith

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abuse or other physical and psychological disruptions in their lives, drug-dependent women have higher levels of depression, lower self-esteem and lower overall self-satisfaction than the population generally, and some become suicidal. *See* Carol J. Boyd, *The Antecedents of Women's Crack Cocaine Abuse: Family Substance Abuse, Sexual Abuse, Depression, and Illicit Drug Use*, 10 J. Subst. Abuse Treat. 433, 437 (1993); Amin N. Daghestani, *Psychosocial Characteristics of Pregnant Women Addicts in Treatment*, in Drugs, Alcohol, Pregnancy and Parenting 7, 8 (Ira J. Chasnoff ed., 1988).

Drug treatment centers historically have concentrated on male addiction patterns and treatment needs. *See* Howell et al., *supra*, at 203. The existing treatment paradigm has proven dramatically less effective for women patients than for men. *See* Women and Treatment, *supra*, at 11. Women typically utilize drugs as a form of self-medication for the physical and mental trauma they have sustained. *See* Jean

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Center (visited Apr. 26, 2000) <http://www.lindesmith.org/lindesmith/library/szalavitz2. html> (noting that "most treatment doesn't deal with . . . the long-term mental health care needs of addicted women, who've commonly experienced molestation, rape, and other violent traumas.") (internal quotation marks omitted). Physical or sexual assault is the most prevalent correlate for drug use in pregnant women and is often thought to be a cause of drug use. *See, e.g.*, Dianne O. Regan et al., *Infants of Drug Addicts: At Risk for Child Abuse, Neglect, and Placement in Foster Care*, 9 Neurotoxicology and Terotology 315, 318 (1987); Teresa Ann Hagan, *A Retrospective Search for the Etiology of Drug Abuse: A Background Comparison of a Drug-Addicted Population of Women and a Control Group of Non-Addicted Women*, in 81 Monograph Series National Inst. on Drug Abuse Research 254, 259 (1987); *see also* Sixth Triennial Report, *supra* ("up to 70 percent of women in drug use treatment report histories of physical and sexual abuse").

Reith Schroedel, Is the Fetus A Person? A Comparison of Policies Across the Fifty States (Cornell University Press, forthcoming 2000) (manuscript at 103).

As of 1990, South Carolina generally did not provide drug treatment tailored to the particular needs of women. *See* ADMS Block Grant, *supra*, at 15. Effective drug treatment for Petitioners required, at a minimum, the establishment of a therapeutic alliance with a health care provider, which was lacking in this case. (J.A. 699-702 (Jessup Test.))[10] Such an alliance is critical to effective treatment for women. A therapeutic alliance takes a "compassionate" approach offering a "continuum of help" starting with prenatal care and continuing through successful completion of treatment. (J.A. 718, 720-21 (Jessup Test.)) Furthermore, "[s]ervice providers need to be sensitive to the feelings and the cultural background of pregnant, substance-using women and offer care in an environment that is supportive, nurturing, and nonjudgmental." HHS TIP, *supra*, at 2. The coercive environment created by Respondents' search policy was the antithesis of establishing a relationship and environment conducive to recovery from drug addiction. (J.A. 699, 700-02, 725-26 (Jessup Test.)) None of the MUSC staff who had direct contact with Petitioners under the policy had the training in substance abuse counseling or treatment necessary for effective communications with the patients. (J.A. 643-45 (Horger Test.)); (J.A. 296-97 (Chasnoff Test.))

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[10] "[T]reatment of drug-dependent women was more likely to be successful if treatment was provided in a mutually supportive therapeutic environment . . . ." Sixth Triennial Report, *supra*. *See generally* Dawn Johnsen, *Shared Interests: Promoting Healthy Births Without Sacrificing Women's Liberty*, 43 Hastings L.J. 569, 573-75 (1992) (explaining the social policy ramifications and positive social benefits of utilizing a "facilitative," as opposed to "adversarial," model to address pregnant women's health issues).

Unfortunately, many of the deficiencies that faced Petitioners still exist. Drug treatment programs geared to pregnant women that employ a therapeutic model are scarce. *See* Research and Policy, *supra*, at 659. Despite federal government recognition that "[i]t is imperative that programs include services designed specifically for women, particularly pregnant women," HHS TIP, *supra*, at 6, some drug treatment centers turn away pregnant women because they fear legal liability, ADMS Block Grant, *supra*, at 18.

B. Involuntary Search Policies Deter Drug-Using Pregnant Women From Obtaining Treatment.

The knowledge or fear that a positive drug search would lead to punitive measures commonly deters women from seeking any prenatal medical care. *See* ADMS Block Grant, *supra*, at 5, 20. Contrary to Respondents' claim that the search policy would lead women simply to stop using drugs or seek treatment on their own, criminalization of substance abuse during pregnancy is counter to the best interests of fetuses and "pregnant women as pregnant women may forgo early prenatal care or substance abuse treatment for fear of losing their children or of being arrested." Lawrence J. Nelson & Mary Faith Marshall, Ethical and Legal Analyses of Three Coercive Policies Aimed at Substance Abuse by Pregnant Women 12 (1998).[11] Abundant evidence demonstrates that laws and policies similar to the search policy at issue in this case deter women from coming to the hospital for prenatal care or to deliver.

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[11] *See also* American Medical Association Board of Trustees Report, *Legal Interventions During Pregnancy: Court-Ordered Medical Treatment and Legal Penalties for Potentially Harmful Behavior by Pregnant Women*, 264 JAMA 2663, 2667 (1990).

See, e.g., ADMS Block Grant, *supra* at 20.[12] These punitive laws and policies "drive women underground." Maia Szalavitz, *War on Drugs, War on Women*, 8 On The Issues Magazine 42 (1999), *reprinted in* Lindesmith Center (visited Apr. 26, 2000) <http://www.lindesmith.org/lindesmith/library/szalavitz2.html>. The net result is that children and society are harmed rather than helped. *See* Nelson, *supra*, at 12; *see also* Board of Directors of the American Society of Addiction Medicine, *Public Policy Statement on Chemically Dependent Women and Pregnancy* (visited May 26, 2000) <http://www.asam.org/frames.html>. Here, the record demonstrates that Respondents' search policy likely had exactly this harmful deterrent effect. (J.A. 700-09, 719-20 (Jessup Test.)); (J.A. 905-06 (Nicholson Test.)) (describing how she avoided prenatal care for some time because she feared being put in jail). Ironically, in some extreme cases, the fear of involuntary drug searches may even lead a woman to have an abortion when she otherwise would not have had one. *See* Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 Harv. L. Rev. 1419, 1445 (1991).

Further undermining the ability of the search policy to identify drug-addicted pregnant women was the fact that it focused only on cocaine users, despite ample evidence that many other substances, both legal and otherwise, are equally or more harmful to a developing fetus. (J.A. 706 (Jessup Test.)); (J.A. 281-85 (Chasnoff Test.)) While *amici* do not mean to suggest either that cocaine use during pregnancy is acceptable or that involuntary searches for all drugs would

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[12] Additionally, women fear that they will be stigmatized if it becomes known that they have used drugs. *See* HHS TIP, *supra*, at 8. Many pregnant substance users have experienced indifferent or harsh treatment from medical personnel, who treat them like they are "just junkies." *See* Women and Treatment, *supra*, at 11.

be appropriate, focusing solely on cocaine use was not the right approach. Moreover, the undue discretion afforded to MUSC staff to determine subjectively which women to test (discussed further below) created a selectivity that inaccurately identified the women to be searched.[13]

In finding the policy effective for identifying the target population, the court below ignored the consequences of Respondents' penal and discriminatory approach. The court below additionally ignored the inevitable outcome of a policy that deters women from seeking prenatal care or medical attention during childbirth: the endangerment of both the pregnant woman and the fetus. Instead of encouraging pregnant women to obtain medical treatment and other services that often result from a prenatal examination, such as information, referrals, social services, and the like, the search policy likely left some women feeling they had no choice but to deal in isolation with their problems. The search policy thereby deprived these women of the assistance they needed to overcome the societal and economic hurdles that stood in their way.

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[13] *See also* National Council on Alcoholism and Drug Dependence, Policy Statement, *Women, Alcohol, Other Drugs and Pregnancy* (1990) (there is "increasing evidence of disparities regarding the screening and reporting of positive toxicologies of newborns, with women of color, poor women and women receiving care in public hospitals having the greatest likelihood of being subject to drug testing and subsequent reporting to legal authorities").

C. The Degree of Intrusion Caused By The Search Policy Was Neither Objectively Nor Subjectively Minimal.

1. Conducting Involuntary Drug Searches During Medical Examinations Does Not Make Them Minimally Intrusive.

The searches in this case were highly intrusive under established Fourth Amendment jurisprudence. In *Skinner* v. *Railway Labor Executives' Association*, 489 U.S. 602 (1989), this Court held that the collection and testing of urine intrudes upon unquestionably reasonable expectations of privacy, *id.* at 617, and requires its subject "to perform an excretory function traditionally shielded by great privacy," *id.* at 626. Moreover, urine testing invades the subject's privacy insofar as "it discloses [information] concerning the state of the subject's body, and the materials [she] has ingested." *Acton*, 515 U.S. at 658.

Here, the court below held that "the context in which the searches at issue here occurred" made them only minimally intrusive, reasoning that "[t]he giving of a urine sample is a normal, routine, and expected part of a medical examination." *Ferguson*, 186 F.3d at 479 (citation omitted). That reasoning misconstrues the applicable Fourth Amendment principles. Searches based on urine samples taken in a medical environment may sometimes be less intrusive than comparable searches in which urine samples are taken in the field (*i.e.*, by police officers, or direct supervisors of employees), *see Skinner*, 489 U.S. at 626, but that does *not* make them minimally intrusive. In this case, Respondents co-opted the symbols of professional medicine to conceal the actual purpose and consequences of the drug searches effected through urinalysis – which were revealed

only later when law enforcement personnel handcuffed and arrested Petitioners.[14] In fact, Petitioner Nicholson was even lied to about the purposes for which her sample was taken. (J.A. 900 (Nicholson Test.)) As such, the searches were highly intrusive, which distinguishes them from those at issue in *Acton*, 515 U.S. at 658 ("[T]he results of the tests are disclosed only to a limited class of school personnel who have a need to know; and they are not turned over to law enforcement authorities or used for any internal disciplinary function."), and *Pierce v. Smith*, 117 F.3d 866, 875 (5th Cir. 1997) (holding that a urine test was relatively noninvasive where "the test was not undertaken for law enforcement purposes, law enforcement personnel were not involved, and there was no threat of force and no potential criminal or civil penalty for refusing.").[15] Respondents' attempt to cloak the

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[14] The Fourth Amendment cases this Court and others will likely face in the future may increasingly involve seemingly innocuous search policies with disastrous consequences for privacy. Technological advances and the sophistication of law enforcement enable the government to craft search methods that appear unintrusive but in fact may cause severe invasions of personal dignity and autonomy. *Amici* urge this Court to consider these ramifications of this important "special needs" case, and to clarify the analytical framework to make it responsive to the changing face of the intrusiveness inquiry.

[15] This case is also distinguishable from *Chandler v. Miller*, 520 U.S. 305 (1997), where this Court held that Georgia's program of urine testing of prospective candidates for political office was "relatively noninvasive." *Id.* at 318. The policy at issue there provided that "the results of the test are given first to the candidate, who controls further dissemination of the report." *Id.* Here, in contrast, hospital staff routed drug search results to police, and the subjects of those searches could not control dissemination of search results. Moreover, unlike *Chandler* (and all of this Court's prior "special needs" drug testing cases), the Petitioners did not necessarily know that their urine would be

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searches in a medical mantle should not mislead this Court into believing the urine testing was no different than a "regular physical examination" consistent with medical norms and incidental to medical care and treatment and therefore minimally intrusive.

2. The Involuntary Drug Searches Were Highly Subjectively Intrusive.

The intrusiveness of a search also has a subjective component measured by the amount of discretion vested in the person conducting the search, *see Von Raab,* 489 U.S. at 667, and the threat of risk, trauma, or pain to the person being searched, *see Skinner*, 489 U.S. at 625. The court below acknowledged this point, yet found the searches here subjectively minimally intrusive because "urine drug screens were conducted whenever one of the criteria for testing was met; a treating physician had no discretion to decline to order a urine test under the policy." *Ferguson*, 186 F.3d at 479. This conclusion is flawed for three reasons.

First, the hospital staff used inaccurate and subjective criteria to determine who would be searched. Hospital staff chose certain identifying characteristics to determine who would be searched. Several of the characteristics (*e.g.*, "late" or "incomplete prenatal care") were thinly veiled proxies for low socioeconomic status or race – thereby exacerbating the invidiousness of a policy framed in the shadow of racial animus.[16] (J.A. 286-91 (Chasnoff Test.)) ("Women who are

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tested for drug use at the time they submitted urine samples, as illustrated by Petitioner Nicholson's testimony cited above.

[16] *Amici* are aware that Petitioners' Title VI discrimination claim is not presently before this Court. *Amici* submit, however, that the policy's racial impact must be considered in evaluating the level of subjective intrusion.

poor have very little access to prenatal care, so that if you say, well, you didn't get prenatal care and so we're going to test your urine for drugs, what you're also saying is, you're poor, we're going to test your urine for drugs.") The plethora of triggering characteristics invited the medical staff to apply far-reaching discretion in deciding who was to be searched. Indeed, a hospital social worker who observed firsthand the operation of the policy testified that Nurse Brown boasted that she dictated which patients should be tested. (J.A. 1199 (M. Williams Test.)) *See also* J.A. 209, 250, 256-57 (Brown Test.) (Brown believes "mixing of races is against God's way" and admits she recorded the race of her patients and their boyfriends in medical charts).

Petitioners' nationally renowned expert witness, Dr. Ira Chasnoff, described certain triggers for testing as subjective and medically senseless. (J.A. 286 (Chasnoff Test.)) For example, two criteria, premature delivery and abruption, may be associated with tobacco use and a "wide range of problems." *Id.* A prominent 1990 research article co-authored by Dr. Chasnoff explained that where vague standards are used to identify drug users in this context, African-Americans are disproportionately targeted because of prejudices and preconceptions, even though the rates of substance use during pregnancy are similar across racial groups. *See* Ira J. Chasnoff et al., *The Prevalence of Illicit-Drug or Alcohol Use During Pregnancy and Discrepancies in Mandatory Reporting in Pinellas County, Florida*, 322 New Eng. J. Med. 1202, 1205-06 (1990); *see also* (J.A. 286-93 (Chasnoff Test.)).

Second, the selection of the site for drug searches was itself subjective and resulted in overly intrusive searches of disadvantaged African-American women. The policy was instituted at only one hospital in Charleston – the hospital that served a large number of African-American, economically disadvantaged patients. (J.A. 24-25 (Annibale

Test.)); (J.A. 429 (Durban Test.)); (J.A. 1121, 1123 (Schwacke Test.))

Third, although the urinalysis Respondents used detected all drugs used, not just cocaine, *Ferguson,* 186 F.3d at 482, the search policy had an unmistakably discriminatory impact on African-American women because Respondents acted only upon positive results for cocaine and made no effort to track or punish women who tested positive for other drugs. *See id.* at 489 (Blake, J., dissenting). In fact, "90 percent of maternity patients who tested positive for cocaine were African-American," while "only 68 percent of maternity patients who tested positive for any drug were African-American." *Ferguson*, 186 F.3d at 481. That is, cocaine use, compared to that of other drugs, was disproportionately concentrated among African-Americans. Yet cocaine may be far less dangerous to fetuses than substances like nicotine and alcohol. Dan Steinberg & Shelly Gehshan, National Conference of State Legislatures, State Responses to Maternal Drug and Alcohol Use: An Update, at 4 (2000). Respondents' decision to target only cocaine users was an unwarranted exercise of discretion.

For all of the above-stated reasons, the level of subjective intrusion in this case was exponentially greater than that in *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990). *Sitz* was a checkpoint case, not a special needs case, *see id.* at 450, and therefore is not controlling. However, because the Fourth Circuit relied on *Sitz*, *amici* discuss the *Sitz* framework to demonstrate why the Fourth Circuit's analysis was wrong. In *Sitz*, all motorists passing a checkpoint were treated universally and uniformly when police simply glanced into their passing cars. Here, in contrast, individual women were singled out from the population of pregnant hospital admittees at the whim of certain members of the medical staff because they exhibited some trait perceived to be marginally correlated with possible drug use. In at least one instance, the

discretion of the hospital staff did not stop with the determination of who was to be searched. Following the testing and identification of a *white* patient as a drug user and that patient's noncompliance with treatment, Nurse Shirley Brown called the Solicitor's Office to intervene on behalf of the white patient and requested that she be given another chance before arrest. (J.A. 265-66 (Brown Test.)) The Fourth Circuit's analysis of subjective intrusiveness erroneously ignored the fundamental racial slant of the policy. Had the court sufficiently probed the record, it could not have overlooked the fact that the policy plainly created a grave risk that MUSC staff would abuse the discretion accorded them.

Because it was subjectively intrusive and arbitrarily applied, the search policy and others like it have dire consequences for minority participation in America's health care system. Indeed, drug search policies such as Respondents' add fuel to the minority mistrust of the medical profession that has existed historically because of incidents like the Tuskegee Study, in which syphilis-afflicted African-American men were systematically denied treatment in the name of science. *See* Lisa A. Eckenwiler, *Pursuing Reform in Clinical Research: Lessons from Women's Experience*, 27 J.L. Med. & Ethics 158, 160 (1999). Several Petitioners acknowledged that Respondents' search policy has caused them to mistrust doctors. *See, e.g.*, (J.A. 550 (Griffin Test.)) ("I will never trust a doctor or a physician again . . . They just – they just tormented – tormented me."); (J.A. 1146-47 (Singleton Test.)) ("I don't trust the system anymore . . . . And from now on I'll be right particular of whom I go to for medical care."). A holding by this Court that the search policy was unconstitutional will help heal that mistrust and create an atmosphere in which African-Americans have a basis for embracing, rather than fearing and being victimized by, our health care system.

CONCLUSION

For the reasons set forth above, *amici* respectfully urge the Court to reverse the decision below and clarify that the special needs exception cannot be used to justify the types of fundamental rights violations that occurred in this case.

Respectfully submitted,

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June 2, 2000

APPENDIX

DESCRIPTIONS OF THE *AMICI*

The Abortion Access Project is a group of activists and health care providers that seeks to increase awareness of abortion as a critical part of comprehensive reproductive health services, address the shortage of abortion providers, and ensure access to abortion for all women. The Abortion Access Project works to ensure that reproductive health services meet all of women's health needs and allow women to make their own decisions around their health, including decisions about preventing unintended pregnancy and having children, without government intrusion.

The American Jewish Congress is a national organization of American Jews founded to protect fundamental constitutional freedoms and American democratic institutions. Its Commission for Women's Equality is an activist group seeking to advance women's rights in a Jewish context. It believes these rights can only be secured if women's reproductive health and freedom is ensured.

Catholics for a Free Choice ("CFFC") shapes and advances sexual and reproductive ethics that are based on justice, reflect a commitment to women's well-being, and respect and affirm the moral capacity of women and men to make sound decisions about their lives. Through discourse, education and advocacy, CFFC works in the United States and internationally to infuse these values into public policy, community life, feminist analysis and Catholic social thinking and teaching.

As such, CFFC is committed to promoting the just and equal treatment of all women, specifically with regard to sexual and reproductive health practices and policies, regardless of race, class and sexual orientation.

The Coalition of Labor Union Women ("CLUW") is a national association of over 20,000 union members which advances the benefits of organized workplaces for women. Since the AFL-CIO Executive Council decision in 1991 to remain neutral on supporting or opposing the issue of a woman's right to choose, CLUW's Reproductive Rights Project is the only vehicle to join the pro-choice labor movement with the pro-choice movement. The Project's mission is to raise the support of union members for reproductive health issues and to increase their involvement in the pro-choice movement. CLUW is especially committed to addressing the reproductive health needs and concerns of minority women to provide ALL women with the means to achieve economic self-sufficiency.

The mission of the *Connecticut Consortium for Women and Their Children with Behavioral Health Needs ("CT Consortium")* is to improve behavioral health care for women and their children. The CT Consortium works through facilitation, collaboration, communication, and cooperation within the women's behavioral health community in Connecticut by researching, educating, and advocating with respect to salient issues. We promote and support promising practices, programs, and policies through consultation, technical assistance, and training. We believe the consortium model encourages diversity and meaningful participation by consumers and persons in recovery. We believe that the success of the consortium model depends on mutual respect, trust, and collaboration. We believe the results of our work should be widely shared to promote positive changes in policy and practice. We believe that the work needed to improve women's behavioral health must address social, economic, environmental, physical, political, and legal issues and policies as well as mental health and addiction treatment. Our goals and objectives are to improve behavioral health care for women and their children through: integration and coordination of services across disciplines and agencies; increased access to treatment and recovery

support services; improved matching of women's service needs to appropriate, state-of-the-art treatment; and provision of technical assistance and support to consumers, providers, and policymakers.

Family Watch is a national network of parents and other family members concerned about the impact of drug abuse and drug policy on families, women and children. We are dedicated to educating the public and increasing the availability of drug abuse prevention programs that preserve the health and well-being of the family unit and each of its individual members, particularly the children.

The Feminist Majority Foundation ("Foundation") is a non-profit organization with offices in Arlington, Virginia and Los Angeles, California. The Foundation is dedicated to eliminating sex discrimination and to the promotion of equality, women's rights and safe access to abortion and birth control. The Foundation actively pursues legal protection for reproductive health services, including having provided legal counsel for Respondents in *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753 (1994), which upheld the use of clinic safety buffer zones.

The Institute for Health and Recovery ("IHR") is a non-profit organization committed to the development of a continuum of comprehensive services for alcohol and drug dependent women and their families throughout Massachusetts. IHR is committed to establishing collaborative models of service delivery and fostering family-centered services. IHR firmly believes that addiction is an illness requiring treatment, not a crime requiring punishment. IHR members know firsthand the fears pregnant substance abusing women have regarding prosecution and loss of child custody, causing them to be reluctant to seek prenatal care and substance abuse treatment. Prosecution of pregnant women only serves to keep women out of treatment, thereby endangering the health and well

being of more women and children. Arresting substance abusing mothers and pregnant women is not a substitute for providing accessible, supportive and therapeutic treatment for their addiction. Therefore, we fully support the NARAL Foundation's brief in support of the Petitioners.

The Legal Action Center is a non-profit organization with offices in New York City and Washington, D.C., specializing in legal issues of concern to alcohol, drug and AIDS prevention/treatment communities. The Legal Action Center plays a major role in the policy debate and policy formulation on issues affecting women with alcohol and drug problems and their families, working to enact public policies that promote increased access to care for them. The Legal Action Center also provides legal representation to individuals who have faced discrimination because of their alcohol and drug dependencies. This petition raises issues of great importance to the Legal Action Center and the individuals and treatment programs it represents.

Medical Students for Choice represents over 5,000 medical students and residents who are demanding a comprehensive medical education including abortion training. Our goals are to build a network of support and resources for students and residents, to reform medical curricula and training to include abortion and reproductive health as a standard part of medical education, to increase reproductive health education and training opportunities for medical students and residents, and to advocate integrating abortion into medical training and practice by educating policymakers in medicine and government. We work on a grassroots basis at medical schools and residency programs throughout North America, sponsor national and regional educational meetings, provide reproductive health clinical training externships, maintain a presence on the Internet, and publish a quarterly newsletter.

Medical Students for Choice is dedicated to ensuring that women receive comprehensive reproductive health care,

including abortion. One of the greatest obstacles to safe, legal abortion is the absence of trained providers. Abortion and reproductive health care must be a part of standard medical training and practice. As medical students and residents, we are committed to ensuring that medical practitioners are prepared to provide their patients with a full range of reproductive health care choices.

The National Abortion and Reproductive Rights Action League Foundation ("the NARAL Foundation") is a national, non-profit organization dedicated to keeping abortion safe, legal, and accessible for all women. The NARAL Foundation's mission is to work for the right of every woman to make personal decisions regarding the full range of reproductive services, including preventing unintended pregnancy, bearing healthy children, and choosing legal abortion. In fulfilling this mission, the NARAL Foundation promotes the input and participation of a diverse group of individuals and is committed to combating institutional racism and discrimination.

The National Asian Women's Health Organization ("NAWHO") is a non-profit, community-based advocacy organization that has significantly changed the health and well-being of Asian Americans since its founding in 1993. NAWHO's mission is to improve the health status of Asian American families through research, education, leadership and public policy programs that empower women, and address broader social justice issues for under-served communities of the entire American population.

The National Black Women's Health Project is the only national organization dedicated to the health and well-being of African American women. We support the right of every woman – regardless of age, income, or education – to make her own decisions regarding whether, when, and under what conditions she will bear children and to receive confidential, comprehensive and quality health care.

The National Partnership for Women & Families, founded as the Women's Legal Defense Fund in 1971, is a non-partisan, non-profit advocacy group that uses public education and advocacy to promote fairness in the workplace, quality health care, and policies that help women and men meet the dual demands of work and family. The National Partnership firmly believes that quality health care must never include punitive policies that infringe on a woman's reproductive health. The National Partnership has a long history of promoting and defending a woman's right to choose by filing *amicus curiae* briefs in major reproductive rights and health cases.

The National Women's Health Network is an independent, member-supported organization dedicated to safeguarding women's health rights and interests. The Network advocates for policies that will improve the health of women and provides women with information and resources to assist them in making better health care decisions. Nationwide, the Network has more than 12,000 individual members and 300 organizational members. It is the only national member-based organization devoted solely to the health of all women.

The National Women's Law Center is a non-profit legal advocacy organization that has been working since 1972 to advance and protect women's legal rights. The Center's primary goal is to ensure that public and private sector practices and policies better reflect the needs and rights of women. Women's ability to access the full range of reproductive health services, including abortion services (the fundamental right to which is recognized in *Roe v. Wade*) is of profound importance to the women's lives throughout the country. Because of the tremendous impact that barriers to health services can have on to women's ability to participate fully in society, the National Women's Law Center seeks to preserve their right to the full range of reproductive health services.

Neighborhood Youth & Family Services is a 30-year-old, Bronx, community-based, minority-led social service agency. Its mission is to prevent the placement of children in any but their natural homes whenever possible. The agency serves two thousand families annually in its six divisions. One of its largest divisions is a woman-specific drug treatment program that has integrated domestic violence services. The program also provides infant and childcare, job development and placement, a basic education school leading to a high school diploma, pre and postnatal care, pediatric care as well as van services. It is a medically supervised, drug free intensive day treatment program.

The Osborne Association ("OA") is a 75-year-old non-profit criminal justice organization that provides educational, vocational and treatment services to prisoners, former prisoners and their families. We have service sites in Brooklyn, Manhattan and the Bronx in New York City, as well as 10 city and state correctional facilities.

Physicians for Reproductive Choice and Health® ("PRCH") is a national physician-led not-for-profit organization founded in 1992. PRCH represents more than 3,700 physicians of various disciplines and non-physician supporters. The mission of PRCH is to enable concerned physicians to take a more active and visible role in support of voluntary universal reproductive health. PRCH is committed to ensuring that all people have the knowledge, equal access to quality services and freedom of choice to make their own reproductive health care decisions. Non-consensual drug testing of pregnant women directly opposes PRCH's mission.

The ProChoice Resource Center ("PCRC") provides on-site workshops, extensive technical assistance, innovative print and electronic publications, and other resources to the pro-choice grass roots. PCRC also serves as a clearinghouse of information about the grass roots for the reproductive rights

community, policymakers, and the media. PCRC is an independent, nonpartisan, nonprofit organization.

We are interested in *Ferguson v. City of Charleston* because the issue of non-consensual drug testing of pregnant women seeking obstetrical care affects the reproductive freedom of women all over America, and the grass roots groups that we work with consequently have a strong interest in the case.

Women In Need, Inc. ("WIN") was established in 1983 by Rita Zimmer, who serves today as President and CEO. WIN serves more than 2,500 homeless and disadvantaged women and children each year. WIN's programs and counselors address the leading causes of homelessness: *domestic violence, substance abuse*, and lack of job skills or education. WIN provides comprehensive services ranging from childcare to educational programs to help clients achieve permanent housing and compete for employment opportunities that will allow them stable and secure futures.

We at WIN feel the rights and needs of women are of the utmost importance and we are constantly examining new ways of implementing help to Women in Need of a broad range of services that are currently unavailable to them now. It is important that disadvantaged women are given a chance to succeed and become independent wage earning citizens.

The YWCA of the U.S.A. is the nation's oldest and largest women's membership movement. Operating out of thousands of locations in all 50 states, the YWCA of the U.S.A. represents approximately 2 million women, girls, and their families. Because the YWCA's Mission is to empower women, to eliminate racism and to pursue justice, freedom and dignity for all people, the YWCA has historically been concerned about women's health and access to health care services. This concern extends to the quality of services, the availability of health care to women of all socioeconomic backgrounds, the right of women to be informed about legal

options, and the right of an individual to make her own decisions privately with her physician's guidance based on her own religious and ethical values.